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By *Jesse K. Lane*
Printed Name: *Jesse K. Lane*

PATENT
Atty. Docket No.: 014058-009070US

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TECH CENTER 1600/2900

In re application of:

SKEIKY, et al.

US Application No.: 09/886,349

Filed: June 20, 2001

For: FUSION PROTEINS OF MYCOBACTERIUM
TUBERCULOSIS

Examiner: Not Yet Assigned

Art Unit: Not Yet Assigned

PETITION UNDER
37 C.F.R. § 1.181(a) TO WITHDRAW
HOLDING OF ABANDONMENT

Box DAC
Assistant Commissioner for Patents
Washington, D.C. 20231

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OFFICE OF PETITIONS

Sir:

Applicants respectfully petition under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment for the above-referenced patent application for failure to receive a Notice to File Missing Parts. The following items are enclosed herewith:

1. Copy of PTO date-stamped postcard showing an application filing date of June 20, 2001 (Exhibit A).
2. Copy of the docket record where the nonreceived Office communication would have been entered, had it been received (Exhibit B).
3. Executed formal documents, including declarations under 37 C.F.R. § 1.63, an assignment, a power of attorney, and a statement under 37 C.F.R. § 3.73(b), for filing in the above-referenced application (Exhibits C-F).

REMARKS

The above-referenced application was filed on June 20, 2001 (Exhibit A).

After almost one year, the undersigned attorney had not received a notice of missing parts, although no signed declaration had been included with the filing papers, nor an official filing receipt. After telephoning the customer service office of the Initial Patent Examination Division on May 29, 2001 to determine the status of the application, Applicants were notified that the above-referenced application was abandoned. No notice of abandonment has been

received. The clerk in the customer service office stated that the abandoned status was due to a failure to respond to a Notice to File Missing Parts, purportedly mailed by the USPTO in September 2001 (no specific date was given). Applicants respectfully aver that no such Notice to File Missing Parts was received or has yet been received, and therefore respectfully petition under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment.

To fulfill the showing required to establish nonreceipt of an Office communication to which a reply was required, Applicants herewith:

1. State that neither Applicants nor Applicants' agents received the Notice to File Missing Parts described by the clerk in the customer service office of the Initial Patent Examination Division, and attest that a search of the file jacket and docket records indicates that the Office communication was not received.

2. Provide a copy of the docket record where the nonreceived Office communication would have been entered, had it been received (Exhibit B). This docket report shows all actions due in the PTO and all actions completed by Applicant from date of filing to the date on the docket report (August 2, 2002). The docket report does not show either that a Notice of Missing Parts was received or completed, however, had a Notice of Missing Parts been received the due date would be listed in the docket report.

3. Provide executed formal documents, including declarations under 37 C.F.R. § 1.63, an assignment, a power of attorney, and a statement under 37 C.F.R. § 3.73(b), for filing in the above-referenced application (Exhibits C-F).

Should the petition to withdraw holding of abandonment not be granted, Applicants petition in the alternative to revive the above-referenced application under 37 C.F.R. § 1.137(b) as unintentionally abandoned for failure to timely respond to a Notice to File Missing Parts that was purportedly mailed in September 2001. Applicants request revival of the application and submit the required response in the form of executed formal documents. Applicants herewith:

1. Provide the required reply, namely, executed formal documents, including declarations under 37 C.F.R. § 1.63, an assignment, a power of attorney, and a statement under 37 C.F.R. § 3.73(b), for filing in the above-referenced application (Exhibits C-F).

2. Authorize deduction of the petition fee, pursuant to 37 C.F.R. § 1.17(m), in the amount of \$1280.00 for a large entity, and authorize payment of the missing parts fee in the amount of \$130.00 for a large entity pursuant to 37 C.F.R. § 1.16(e) from Deposit Account No. 20-1430 of the undersigned. The utility application filing fee and excess claims

fee were already been paid upon filing the application. If necessary, please also charge any required extension of time fee to Deposit Account No. 20-1430 of the undersigned.

3. State that the entire delay in filing the petition pursuant to 37 C.F.R. 1.137(b)(3), from the due date for the reply to the filing of a grantable petition, including the delay from the date of discovery of the abandonment of the application, was unintentional.

Please charge any additional fees or credit overpayment to the above deposit account. This petition is submitted in duplicate.

CONCLUSION

If a telephone conference would expedite consideration of this matter, the Examiner is invited to telephone the undersigned at (415) 576-0200.

Respectfully submitted,


Annette S. Parent
Reg. No. 42,058

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